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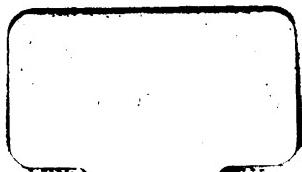
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# PRACTICE

OF

## NAVAL SUMMARY COURTS-MARTIAL.

PREPARED BY

A. A. HARWOOD, U. S. N.

WASHINGTON:  
FRANCK TAYLOR.  
1863.

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Entered according to the Act of Congress, in the year 1863, by

A. A. HARWOOD,

in the Office of the Clerk of the District Court of the United States in and  
for the District of Columbia.

## P R E F A C E.

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THIS little manual is an arrangement of the law of Congress establishing Summary Courts-Martial, and the Regulations of the Navy Department issued in conformity with that law.

The arrangement also comprises an order of proceeding, and such general rules of evidence as appeared to be consistent with the conciseness and precision enjoined by the law and the regulations referred to.

The latter will be found in the Appendix, which also contains such necessary forms as will contribute to ensure regularity and exactness in the proceedings and in keeping the record.

To the junior grades in the navy, and especially to those officers who have been brought into it from the commercial marine by the exigencies of the times, and whose former pursuits have not led them to familiarize themselves with the principles and formalities of military law, it is hoped the work will be useful and acceptable.

WASHINGTON, April, 1863.

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## NAVAL SUMMARY COURTS-MARTIAL.

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§ 1. SUMMARY COURTS-MARTIAL were established for the trial, in the navy, of lesser offences, which the commanders of vessels may deem deserving of greater punishment than they are, by law, authorized to inflict\* upon petty officers and persons of inferior ratings under their command, but not sufficient to require trial by General Court-Martial.

### AUTHORITY OF SUMMARY COURTS-MARTIAL.

§ 2. The authority for Summary Courts is derived from "*an act to provide a more efficient discipline of the Navy, approved*

\* *Commanders of vessels of the Navy are not authorized by law, to inflict, or cause, or permit to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offence, or at any one time any other than the following punishments, except by sentence of a General or Summary Court-Martial.*

*First. Reduction of any rating established by himself.*

*Second. Confinement, with or without irons, single or double; such confinement not to exceed ten days, unless necessary in the case of a prisoner to be tried by Court-Martial.*

*Third. Solitary confinement on bread and water not exceeding five days.*

*Fourth. Solitary confinement not exceeding seven days.*

*Fifth. Deprivation of liberty on shore.*

*Sixth. Extra duties. All punishment inflicted by the Commander or by his order, except reprimands, are required to be fully entered on the ship's log. (See law for the better government of the Navy of the United States, approved July 17th, 1862. Article 10.)*

*March 2, 1855;*" and the laws in reference to such courts and rules of procedure, are embodied in that act, and in *the general order of April 4th of the same year*, issued in conformity therewith by the Navy Department, and approved by the President of the United States.

§ 3. The Commander of any vessel of the Navy is authorized to convene a Summary Court by a brief order to the Senior Member of the Court, stating the name and rank of the members of the Court, and the time and place of meeting; and, by written or verbal orders to the members and the Recorder. The written order to the Senior Member must always be appended to the proceedings. (*See General Order of 1855, Sec. 2d.*)

§ 4. The Court must consist of three officers not below the rank of Passed Midshipman (Ensign\*), and of some competent person to act as Recorder. (*See Act to provide a more efficient discipline, etc., Sec. 5th.*)

§ 5. The Department has decided that where small vessels are serving in company, as, for instance, in a flotilla, and there are not officers enough of legal rank to compose a Summary Court-Martial, officers of a proper grade may be ordered from other vessels to report to the Commanding Officer of the vessel in which the deficiency exists, in order that they may be appointed by him members of a Summary Court-Martial; such orders being understood to be temporary.

#### SPECIFICATION.

§ 6. The Officer ordering the Court is required to have a written specification prepared, in as brief and explicit terms as

\* *The title of Ensign was substituted for that of Passed Midshipman, by the Act of Congress to establish and equalize the grades of Line Officers of the United States Navy, approved July 16th, 1862.*

practicable, embracing all offences or misconduct committed at any one time by the same individual, and for which he is to be tried. This specification must be approved by the officer ordering the Court, and a duplicate of it annexed to the record. A copy of it must also be furnished to the accused before trial. (*See General Order, April 4th, 1855, Sec. 5th.*)

§ 7. The essential points, in framing the specification, are to use such plain terms in describing the offence or offences, "as will enable the person accused to know what he is to answer, and to enable the Court to know what it is they are called to inquire into." \* The name, surname, and rating of the accused should be designated, and the fact or facts, time when, and place where they were committed, should be stated with as much precision as circumstances will allow.

Nothing should be alleged but that which is culpable and that which the prosecutor is prepared to substantiate.

§ 8. Offenders cannot be legitimately arraigned before a summary Court-martial in cases evidently intended by the law for the government of the navy to be tried by a General Court-martial. The law referred to makes it the duty of Courts-Martial "in all cases of conviction to adjudge a punishment *adequate* to the character and nature of the offence committed, and, as Summary Courts were established for the punishment of offences not sufficient to require trial by General Court-martial," it follows that they are not competent to take cognizance of crimes of a nature which the Superior Court alone is vested with power to punish adequately. (*See Sec. 1st and Sec. 7th of the act to provide for a more efficient discipline of the navy, approved March 2d, 1855, and articles 2, 3, 4, 5, 7, of an act for the*

\* *Colonel Quentin's Trial.* See Major Kennedy's practical remarks, Chap. iii.  
page 31.

*better government of the Navy of the United States, approved July 17th, 1862).* The act of 1855 referred to above, provides, however, that any punishment authorized to be inflicted by a Summary Court, may likewise be inflicted by a General Court-Martial. (See Section 10th.)

#### RECORDER.

§ 9. The duties of the Recorder of a Summary Court-Martial are—

1. To give to the prisoner to be tried due notice that the Court has been ordered for his trial; to supply him with a copy of the specification upon which he is to be tried, with a list of witnesses intended to be summoned in proof thereof, and to call upon him for the names of the persons he intends to examine in his defence.
2. To summon the witnesses required for the prosecution and defence. This is to be done through the Executive Officer, unless disapproved by the Commanding Officer for some reason to be stated in the record. (See *General Order of Navy Department of April 4th, 1855, Art. 7.*)
3. To administer the prescribed oath to the members of the Court.
4. To keep a true record of the proceedings.
5. To put questions to the witnesses in order that the proofs on the part of the prosecution and the prisoner shall be properly and impartially laid before the Court.
6. To prepare a fair copy of the minutes of the proceedings for transmission to the Department.

The attention of the Recorder should be especially directed to sections 5th and 6th of the Act of Congress "to provide a more efficient discipline of the Navy," approved March 2d,

1855, and to Sections 2d, 3d, 4th, 5th, 7th, and 9th of the General Order issued by the Navy Department April 4th, 1835.

§ 10. The proceedings of Summary Courts-Martial must be conducted with as much conciseness and precision as may be consistent with the ends of justice, and the same forms of proceeding and rules of evidence are to be observed as in Naval General Courts-Martial, so far as shall be applicable to and not inconsistent with the law, and the provisions of the General Order of the Navy Department, issued in conformity with it. (*See Act and General Order referred to above. Sec. 9th of Act, Art. 1 of General Order.*)

#### THE TRIAL.

§ 11. At the time and place appointed, which can only be changed by the authority ordering the Court, the members of the Court assemble and take their places, as follows: The senior Member as presiding officer at the head of the table, the remaining members to the right and left of the senior member according to rank, and the Recorder opposite to him.

§ 12. The prisoner and his Counsel have a place assigned with implements for writing at the right hand of the Recorder. The witness near the Recorder at his left hand.

§ 13. The prisoner if there is no marine guard on board, is brought into Court by the Master at Arms, or other suitable person detailed to act as Provost Marshal during the trial. Unless violent or unruly, the prisoner must always be without irons while before the Court. It is customary and proper to allow him a chair.

§ 14. While the Court is not in session it has no control over the prisoner, who on every adjournment, is remitted to the hands of the guard, and the authority of the Commanding

Officer, who is responsible for the safe custody of the person of the prisoner when not before the Court.

§ 15. The Recorder reads audibly the written order of the Commander of the vessel to the Senior Officer of the Court, to convene the Court, and appends it to the record of the proceedings. (*See General Order of the Navy Department, April 4th, 1855, Article 2.*)

§ 16. It is recommended that specifications of the offence or offences alleged, should be read in order to bring before the Court the matter which they are about to swear "well and truly" to try.

§ 17. The order for convening the Court having been read, the Recorder asks the prisoner if he has any objection to any member present named in the order, or any cause of challenge to present to the Court. If objection is made by the accused to any member of the Court, the Recorder will state it in the record of the proceedings, and the Court, if they think fit, will make the objection known to the Commander of the vessel, who will at his discretion order another member of the Court or continue the member objected to. (*See General Order of the Navy Department, April 4th, 1855, Art. 4.*)

§ 18. After hearing the prisoner's objections, the Senior Member must order the Court to be cleared to take into consideration and decide upon the propriety of referring them to the Commanding Officer; the member challenged usually retires during the discussion.

§ 19. It is proper here to state that all deliberations by the Court should be held with closed doors. The Senior Member orders the Court to be cleared for deliberation, when he may deem it necessary, or for any incidental discussion, at the instance of a Member or the Recorder.

§ 20. Generally speaking, sufficient causes of challenge are: the expression of an opinion relative to the subject to be inves-

tigated, or where the circumstances were investigated incidentally, and an opinion formed thereon; prejudice, or malice. The Court and the Commanding Officer to whom the regulations leave the questions of validity, should remember the just principle, "that if the reasons assigned appear to have the slightest tendency to bias or influence the opinion of the Member objected to, the challenge ought to be considered as valid."\*

§ 21. When all objections are disposed of in accordance with the regulations, and the Court is supplied with a legal number of members, the Court is opened, and the Recorder proceeds to administer to the Members the following oath or affirmation: "You, A. B., do solemnly swear (or affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy and your own conscience. So help you God." (*See Art. to provide a more efficient discipline for the Navy, approved March 2d, 1855, Sec. 5th.*)

It is customary in the navy for all the members of Courts-Martial to be sworn together. All the members standing, grasp the Bible with their right hands, ungloved; the Recorder reads the oath, and the members, beginning with the Senior Member, kiss the book successively in token of assent, passing it as they do so from one to the other in order of rank.

§ 22. After which, the Recorder of the Court takes the following oath, or affirmation, which is administered to him by the Senior Member of the Court. "You, A. B., do solemnly swear (or affirm) that you will keep a true record of the evidence which may be given before this Court, and of the pro-

\* *Practical remarks on the proceedings of General Courts-Martial, by Major Vans Kennedy, Ch. ii. p. 22.*

ceedings thereof. So help you God." (*See Act and Sec. cited in the preceding paragraph.*)

§ 23. The Recorder then enters in the minutes of the proceedings, that the oath prescribed by the law was duly administered to each member and to the Recorder, in the presence of the accused. (*See General Order of the Navy Department of April 4th, 1855, Art. 3.*)

§ 24. If more than one case be tried by the same Court, the prescribed oath must be administered anew to the members and the Recorder of the Court; the record of each is kept separate, and the order for convening the Court, which is always to be appended to the first case, is referred to in each subsequent record, so as to show that the proceedings of the Court are continuous; in short, the proceedings are to be made up and signed as if each prisoner had been tried by a distinct Court. (*See General Order of the Navy Department, April 4th, 1855, Art. 9.*)

§ 25. If the prisoner desire the trial to be postponed, this is the proper time to make his application to the Court for that purpose, and to state his reasons. Causes may arise afterward which may render the adjournment of the Court expedient, for the more thorough investigation of the case; such as the absence or illness of an important witness; and the Court may be adjourned accordingly at any time during the trial. Under such circumstances the Court should satisfy themselves that the witness is material, and that without his testimony substantial justice cannot be done to the applicant. (*See De Hart, Chap. vii.*)

§ 26. Application to suspend proceedings for the causes above mentioned, should be referred by the Court to the Commanding Officer of the vessel.

§ 27. The Court must necessarily be adjourned at any period of the proceedings on the satisfactory evidence of a medical officer, that the prisoner is in such a condition as to render it dangerous to attend the Court. If the illness of the prisoner

appears likely to be of a protracted nature, the Commanding Officer may dissolve the Court, and though the trial may have been proceeded with, the prisoner, on recovery, will be subject to a new trial. (*See De Hart, Chap. vii.*)

§ 28. It is at this stage of the proceedings, though it may be allowed at any time, that application is usually made for the assistance of counsel. According to the regulations, the Court, if requested by the accused, may allow a commissioned, warrant, or petty officer to appear as counsel, and cross-examine witnesses in his behalf; but no written defence or argument, nor any protracted oral defence or argument is to be admitted. Nor can any testimony not clearly relevant be admitted, nor any documentary evidence be read to the Court or appended to the record. (*See General Order of the Navy Department, April 4th, 1855, Art. 8.*)

§ 29. The Court having been duly sworn, the Recorder reads the specifications audibly to the prisoner in open Court; but he cannot be required to plead, "guilty or not guilty," as in General Courts-martial. If, however, he chooses, of his own free will to make the plea of guilty, "the Court may, at its discretion, admit testimony as to the character of the offender, or in extenuation of the offence. (*See General Order of the Navy Department, April 4th, 1855, Art. 6.*)

§ 30. The prisoner may plead specially in bar of trial:—

A former acquittal or conviction for the same offence.

A pardon. If the pardon was conditional, the offender must show that the condition on his part has been performed.

That punishment has been inflicted on him for the same offence, according to the discretionary power given by law to Commanding Officers. (*See note to § 1.*) De Hart observes, that "if a Commanding Officer, or other, should by law be empowered (as is the case in the navy) to inflict a certain kind and degree of punishment for some offences, and this power should be

exercised, then as discipline thereby has been duly vindicated, there is no doubt that a plea in bar, under like circumstances would be sustained." (*Observations on Military Law, Chap. vii.* p. 145.)

As the regulations which govern Summary Courts require that the accused shall be furnished before trial with a written specification of the offence or offences for which he is to be tried, he may plead in bar of trial that he has not received a copy; the omission, however, does not make void, though it necessarily postpones the trial until the rules are complied with.

§ 31. If any of the pleas enumerated be such, that if true, the specification should be dismissed and the prisoner discharged; the facts being recorded the Court should adjourn, and the Senior Officer thereof should submit the proceedings to the Commanding Officer of the vessel, with a view to the immediate discharge of the prisoner. (*See Macomb's Practice of Courts-Martial*, § 73, p. 41.)

§ 32. After the preliminary forms of the Court have been complied with, the examination of the witnesses in support of the specification on which the prisoner is to be tried, is next in order.

§ 33. The first witness being called, the Senior Officer gives notice to all others summoned in the case to withdraw, no witness being allowed to be present during the examination of another, except when the Court may deem it necessary to confront two or more witnesses on the same side, whose testimony is contradictory, for the purpose of reconciling their evidence and requiring explanation of such parts of it as are inconsistent and contradictory, and ascertaining as nearly as possible the truth of the case.

§ 34. All witnesses before Summary Courts-Martial must be sworn before giving their testimony, which must be delivered orally. The oath is administered by the Senior Member of

the Court, in presence of all its members and the prisoner, in the following form: "You, A. B., do solemnly swear (or affirm, as the case may be) that the evidence you shall give in the case now before this Court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your recollection in relation to the charges, so help you God (or this you do under the pains and penalties of perjury). (*See Act approved March 2d, 1855, Section 7th, and act for the better Government of the Navy, approved July 17th, 1862, Article 14th.*) The record should state that each witness was duly sworn.

§ 35. "The examination of witnesses is invariably in the presence of each member of the Court, because the countenance, looks and gestures of a witness, add to or take away from the weight of his testimony. It is usually by interrogation, sometimes by narration, in either case the Recorder records the evidence, as nearly as possible in the express words of the witness. All evidence, whatever, should be recorded on the proceedings in the order in which it is received by the Court." (*Macomb, § 77, p. 42.*)

§ 36. The examination in chief of each witness in support of the specification (which is conducted generally by the Recorder) being finished, the witness may be cross-examined by the prisoner, and then re-examined by the Recorder upon such points as the accused may have touched upon.

Finally, the Court put such questions as they may deem necessary to bring out the whole truth in relation to the charges.

§ 40. The Court has the right to put questions at any stage of the trial; but it is considered better that the examination on the part both of the prosecutor and the accused should be completed before the Court interrogate the witness, as the first

examination frequently obviates the necessity of asking any more questions.

§ 40. When the examination of each witness has been concluded, it is an useful rule to read over his testimony to him in order that he may correct any errors he may perceive therein, before he leaves the Court; the correction is then entered on the record; but no erasure or obliteration of what has been previously stated is to be allowed.

§ 41. The examination of witnesses on the side of the prosecution being concluded, the prisoner calls and examines his witnesses in the same manner and in the same order as those presented by the prosecutor. The prosecutor may cross-examine, and the prisoner re-examine, as in the case of the prosecutor's evidence, and lastly, the Court put any questions they may think necessary.

#### EVIDENCE.

§ 42. According to the regulations, issued by the Navy Department in the General Order of April 4th, 1855, the testimony to be admitted by Summary Courts-Martial is to be clearly relevant, and documentary evidence is not to be read to the Court or appended to its record. (*See Section 8th.*) Consequently, the evidence to be received by Summary Courts, is that which is distinguished as parole evidence; given by witnesses in open court of matters within the personal knowledge of the speaker; and to be "clearly relevant" it must have a tendency to establish the facts or points in issue, otherwise it is not to be admitted.

§ 43. Hearsay evidence is also inadmissible; the witness should only be allowed to state what he actually knows from

his own observation, and is not to be examined as to what he has heard, or been informed of by others.

§ 44. What are called leading questions, which by their purport evidently instruct the witness how to answer, should not be allowed to be put.

#### FINDING AND SENTENCE.

§ 45. After all the evidence for and against the prisoner has been heard, the Court is cleared and closed. The Recorder reads over the proceedings in order that the entire body of evidence may be brought to the recollection of the members in one connected view. The Court then discuss the import of the evidence and acquit the prisoner if found innocent of the offence of which he has been accused, or if found guilty, determine the punishment proper to be inflicted, in conformity with the law. (*See Secs. 49th and 50th.*)

§ 46. In any case the Court may find the prisoner guilty of the whole or any part of the misconduct charged, according to the evidence, and adjudge punishment for so much as shall be found proved. (*General Order of the Navy Department, April 4th, 1855, Art. 6th.*)

§ 47. If after a calm and free interchange of views upon the import of the testimony laid before the Court the members should be unable to agree as to the innocence or guilt of the prisoner in regard to the whole or any part of the offence or offences charged against him, the finding should be determined by vote in order to avoid useless discussion. To this end the Senior Member of the Court directs the Recorder to put the question at issue to each of the members, beginning at the youngest, and as they declare their opinions, the Recorder writes them down severally on a sheet of paper.

§ 48. Should the Court find the prisoner guilty, they proceed at once to award a punishment, and in case they disagree as to the kind or degree of penalty to be inflicted, the votes are taken in this last question in the same manner as in the former. The question may be put in the following form by the Recorder : "The Court having found the prisoner guilty of the offence named in the specification, in your opinion what punishment ought to be awarded ?"

Every member must give his vote, whether he has acquitted or condemned the prisoner.

#### PUNISHMENTS AUTHORIZED BY LAW.

§ 49. The Court may sentence petty officers and persons of inferior ratings to any of the following punishments, viz.:—

*First.* Discharge from the service, with bad conduct discharge; but the sentence not to be carried into effect in a foreign country.

*Second.* Solitary confinement in irons, single or double, on bread and water, or diminished rations, provided no such confinement shall exceed thirty days.

*Third.* Solitary confinement in irons, single or double, not exceeding thirty days.

*Fourth.* Solitary confinement not exceeding thirty days.

*Fifth.* Confinement not exceeding two months.

*Sixth.* Reduction to next inferior rating.

*Seventh.* Deprivation of liberty on shore on foreign station.

*Eighth.* Extra police duties, and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments. (*Act to provide a more efficient discipline for the Navy, approved March 2d, 1855, Sect. 7th.*)

§ 50. Summary Courts-Martial may punish any irreverent

or unbecoming behavior during Divine Service. (*See Act for the better government of the Navy, approved July 17th, 1862, Art. 2d.*)

And may disrate any rated person for incompetency. (*Ibid., Article 10th.*)

§ 51. The Recorder draws up the finding and sentence of the Court in clear and explicit terms, declaring exactly what facts are proved or not proved, and if proved, the punishment awarded according to the provisions of the law (§ 49).

The sentence is then signed by all the members of the Court, and the Recorder, and submitted to the Commanding Officer of the vessel for revision and approval.

§ 52. A Commanding Officer ordering a Summary Court-Martial, may, of his own authority, remit, in part, or altogether, but cannot commute the sentence of the Court. And it is made his duty to remit any part, or the whole of any sentence, the execution of which would, in the opinion of the Surgeon or Senior Medical Officer on board, given in writing, produce serious injury to the health of the person sentenced. Under such circumstances, however, a Commanding Officer is authorized, if he thinks proper, to submit the case again, without delay, to the same or to another Summary Court Martial, which may, upon the testimony already taken, remit the former punishment, and assign some other of the authorized punishments in the place thereof. (*See Act of 1855, to provide a more efficient discipline, etc., Sec. 8th.*)

#### APPROVAL OR DISAPPROVAL OF THE SENTENCE.

§ 53. The section of the law just cited declares that "no sentence of a Summary Court-Martial shall be carried into effect without the approval of the officer ordering the Court." This officer therefore affixes (together with his signature to the

proceedings) his approval or disapproval of the sentence, including his decision to remit or mitigate it, should he deem it advisable to take that course.

Having done this, he forwards the proceedings to the Navy Department, in the usual form. (*See Section 9th, of the Act above cited, approved March 2d, 1855.*)

§ 54. The Court is dissolved by the authority that ordered it to convene.

## A P P E N D I X.

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### FORM No. 1.

**ORDER OR PRECEPT FOR CONVENING A NAVAL SUMMARY COURT  
MARTIAL.**

U. S. S.\_\_\_\_\_

March 186 .

SIR : A Naval Summary Court-martial is hereby ordered to convene on board this vessel, on the day of 186 , or as soon after as practicable, for the trial of J. J., ordinary seaman, or of such persons as may be legally brought before it.

The Court will be composed of yourself, as senior member, and of the following officers :—

Master S. A.

Ensign G. H.

and Assistant-surgeon P. C., who will act as Recorder.

A. E. K.,

Lieut. Commander Commanding U. S. S.\_\_\_\_\_

To Acting Lieut. T. B.

Senior Member of the Court.

*Or the order may be a verbal one to the Members and Recorder of the Court. (See General Order of the Navy Department, April 4th, 1855, Sec. 2d.)*

## FORM No. 2.

## MODE OF RECORDING THE PROCEEDINGS OF A SUMMARY COURT-MARTIAL.

Proceedings of a Summary Court-martial, convened on board of the U. S. \_\_\_\_\_ by virtue of the following order, viz.:—

(*Here append the order for convening the Court. General Order, April 4th, 1855, Sec. 2d.*)

U. S. \_\_\_\_\_  
— o'clock A. M., March 186

The Court met pursuant to the above order.

Present:—

Lieut. T. B.

Master J. A.

Ensign G. H.

Assist. Surgeon P. C., Recorder.

The accused being present the Recorder read the order convening the Court, and asked the accused if he had any objection to any Member named therein, to which he replied—

(*General Order, April 4th, 1855, Sec. 4th.*)

(*If any challenge is made, it must be now, and to one Member at a time.*)

The oaths or affirmations prescribed by law were then duly administered, in presence of the accused.

1st. By the Recorder to the Members.

2d. By the Senior Officer of the Court to the Recorder. (*Act, before referred to, approved March 2d, 1855.*)

(*This is the proper time for the accused to make application to introduce his counsel, and he should be so informed by the Recorder; these matters being settled, the Court proceeds.*)

The specification of the offence or offences, were read aloud by the Recorder, and a duplicate thereof annexed to the record. (*General Order, April 4th, 1855, Sec. 5th.*)

(*The accused is not to be required to plead guilty or not guilty to*

*the specification; but if he chooses to plead guilty, the Court may now admit testimony as to his general character, or in extenuation of the offence. (General Order, April 4th, 1855, Sec. 6th.)*

*After which the Court will be cleared for deliberation on the sentence; but if the plea of guilty be not volunteered, the Recorder gives notice that any persons present in the Court, who have been summoned as witnesses, must retire and wait until called for, and the trial proceeds.)*

T. T., Boatswain's mate, U. S. S.\_\_\_\_\_, a witness on the part of the prosecution, was called and sworn, according to the law, by the Senior Member of the Court. (*Act approved March 2d, 1855, Sec. 7th.*)

Question by Recorder. \_\_\_\_\_?

Answer. \_\_\_\_\_.

Question. \_\_\_\_\_?

Answer. \_\_\_\_\_.

Cross-examined by the accused. \_\_\_\_\_?

Answer. \_\_\_\_\_.

By the Court. Question. \_\_\_\_\_?

Answer. \_\_\_\_\_.

Re-examined by the Recorder.

Question. \_\_\_\_\_?

Answer. \_\_\_\_\_.

Question. \_\_\_\_\_?

Answer. \_\_\_\_\_.

(*The examination of the witness being completed, his testimony is read over to him, and corrected if necessary; when the next witness is called, sworn, and examined in like manner. The recorder having presented all the evidence for the prosecution, states such fact, and announces that the prosecution is closed, when the accused enters upon the defence.*)

J. T., ordinary seaman, a witness for the defence, was duly sworn.

Question by the accused. \_\_\_\_\_?

Answer. \_\_\_\_\_.

Cross-examined. Question by Recorder. ?

Answer. \_\_\_\_\_ .

Question. \_\_\_\_\_ ?

Answer. \_\_\_\_\_ .

Question by the Court. \_\_\_\_\_ ?

Answer. \_\_\_\_\_ .

The statements by the parties being thus in possession of the Court, the Court was cleared for deliberation, and having maturely considered the evidence adduced, find the accused—

Of the specification of the offence or offences, guilty or not guilty, in whole, or in part, as the case may be.

And the Court do therefore sentence the accused [here insert name and rating] to [here insert sentence].

T. B., Act. Lieut. and Senior Officer of the Court.

S. A., Master.

G. H., Ensign.

P. C., Assist. Surgeon, Recorder.

The proceedings, finding, and sentence are approved [or disapproved] etc. etc. etc.

(*Here the authority which ordered the Court will make such remarks as he may think proper.*)

A. E. K.,

Lieut. Commander Commanding U. S. S. \_\_\_\_\_

## LAWS OF CONGRESS AND REGULATIONS

OF THE

## NAVY DEPARTMENT IN RELATION TO SUMMARY COURTS-MARTIAL.

*From an Act to provide a more efficient discipline for the Navy.*

Approved March 2d, 1855.

**SEC. 4. And be it further enacted,** That summary courts-martial may be ordered upon petty officers and persons of inferior ratings by the commander of any vessel in the navy to which such persons belong, for the trial of offences which he may deem deserving of greater punishment than the commander of a vessel himself is by law authorized to inflict of his own authority, but not sufficient to require trial by general court-martial.

**SEC. 5. And be it further enacted,** That summary courts-martial shall consist of three officers not below the rank of passed midshipman, and of some competent person to act as recorder. Before proceeding to trial, the members shall take the following oath or affirmation, which the recorder is hereby authorized to administer: "You, A B, do solemnly swear (or affirm) that you will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the navy, and your own conscience. So help you God."

After which the recorder of the court shall take the following oath or affirmation, which the senior member of the court shall administer: "You, A B, do solemnly swear (or affirm) that you will keep a true record of the evidence which may be given before this court, and of the proceedings thereof. So help you God."

**SEC. 6. And be it further enacted,** That the commander of a ship

shall have authority to order any officer under his command to act as the recorder of a summary court-martial.

SEC. 7. *And be it further enacted,* That all testimony given before such court shall be given orally, on oath or affirmation, which the senior member of the court shall administer.

That summary courts-martial may sentence petty officers and persons of inferior ratings to any one of the following punishments, viz:—

*First.* Discharge from the service with bad-conduct discharge, but the sentence not to be carried into effect in a foreign country.

*Second.* Solitary confinement in irons, single or double, on bread and water, or diminished rations, provided no such confinement shall exceed thirty days.

*Third.* Solitary confinement in irons, single or double, not exceeding thirty days.

*Fourth.* Solitary confinement not exceeding thirty days.

*Fifth.* Confinement not exceeding two months.

*Sixth.* Reduction to next inferior rating.

*Seventh.* Deprivation of liberty on shore on foreign station.

*Eighth.* Extra police duties and loss of pay, not to exceed three months, may be added to any of the above mentioned punishments.

SEC. 8. *And be it further enacted,* That no sentence of a summary court-martial shall be carried into effect without the approval of the officer ordering the court, who shall have power to remit in part or altogether, but not to commute, any such sentence. And it shall be the duty of any such commanding officer to remit any part or the whole of any sentence by a summary court-martial the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced; or in case he shall refuse to do so, it shall be his duty, without delay, to submit the case again to the same or to another summary court-martial, which shall have power, upon the testimony already taken, to remit the former punishment, and to assign some other of the authorized punishments in the place thereof.

SEC. 9. *And be it further enacted,* That the proceedings of summary

courts-martial shall be conducted with as much conciseness and precision as may be consistent with the ends of justice, and under such forms and rules as may be prescribed by the Secretary of the Navy, with the approval of the President of the United States; and all such proceedings shall be transmitted in the usual mode to the Navy Department.

*Sec. 10. And be it further enacted,* That any punishments authorized by this act to be inflicted by a summary court-martial may likewise be inflicted by any general court-martial.

*From an Act for the better government of the Navy of the United States.*

Approved July 17th, 1862.

#### ARTICLE 2.

The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances will allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service, diligently to attend at every performance of the worship of Almighty God. Any irreverent or unbecoming behavior during divine service shall be punished as a general or *summary court-martial* shall direct.

#### FROM ARTICLE 10.

Summary courts-martial may disrate any rated person for incompetency.

**GENERAL ORDER.****SUMMARY COURTS-MARTIAL.**

NAVY DEPARTMENT, April 4, 1855.

In conformity with 9th section of the "Act to provide a more efficient discipline for the navy," approved March 2d, 1855, the following regulations have been submitted to and approved by the President of the United States, and will be observed by summary courts-martial convened under the authority of the said act.

1. Summary courts-martial will adopt the same forms of proceeding and rules of evidence as naval general courts-martial, so far as they shall be applicable and not inconsistent with the conciseness and precision enjoined by the law, nor with the provisions of this General Order.

2. The form of convening a summary court-martial will be by a brief written order addressed by the commander of the vessel to the senior member of the court, stating the names and rank of the members of the court, and of the recorder, and the time and place of meeting; and by written or verbal orders to the other members of the court and the recorder. The written order to the senior member will be appended to the record of the proceedings.

3. The record will state that the oath prescribed by the law was duly administered to each member and to the recorder, in the presence of the accused.

4. If objection is made by the accused to any member of the court, it will be so stated in the record of proceedings, and made known, if the court think fit, to the commander of the vessel, who will, at his discretion, order another member of the court, or continue the member objected to.

5. The accused shall be furnished, before trial, with a written specification of the offence or offences for which he is to be tried. The specifications shall be as brief as practicable, without unnecessary repetition or circumlocution, or accumulation of epithets, but explicit; and all offences or misconduct committed at any one time by the same individual and intended to be charged against him, shall be comprised in the same specification, which shall be approved, before trial, by the officer ordering the court, and a duplicate of it to be annexed to the record.

6. The accused shall not be required to plead guilty or not guilty to the specification; but if a plea of guilty be made, the court may, at its discretion, admit testimony as to the character of the offender, or in extenuation of the offence. And, in any case, the court may find the accused guilty of the whole or any part of the misconduct charged, according to the evidence, and adjudge punishment for so much as shall be found proved.

7. Witnesses shall be summoned by the recorder through the executive officer of the vessel, and the summons shall be obeyed, unless disapproved by the commanding officer for some reason to be stated in the record.

8. The court, if requested by the accused, may allow a commissioned, warrant, or petty officer to appear as counsel, and cross-examine witnesses in his behalf; but no written defence or argument, nor any protracted oral defence or argument shall be admitted. Nor shall any testimony not clearly relevant be admitted, nor any documentary evidence be read to the court or appended to the record.

9. If more than one case be tried by the same court, the record of each case shall be separate, the order for convening the court shall be appended to the record of the first case, and be referred to in each subsequent record, so as to show that the proceedings of the court are continuous. And in each case, the prescribed oath shall be administered anew to the members and the recorder of the court.

J. C. DOBBIN,  
Secretary of the Navy.



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FRANCK TAYLOR,

*Washington City.*





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